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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SEP 02 2010

Uniform Issue List: 408.03-00

SE: T:EP:RA:T)

Legend:

Taxpayer = *****

IRA A = *****

Account B = *****

Amount 1 = \$*****

Financial Institution A = *****

Financial Institution B = *****

Investment Fund B = *****

Dear *****:

This is in response to your request dated March 26, 2010, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer, age represents that on February 20 he received a distribution from his individual retirement account ("IRA A") totaling Amount 1, from Financial Institution A. Taxpayer asserts that his purpose in taking the distribution was to

move the funds to an IRA with Financial Institution B. Taxpayer asserts that his failure to properly roll Amount 1 into another IRA was due to an error by a representative of Financial Institution B who informed Taxpayer that Financial Institution B was able to handle IRAs. Taxpayer asserts that the funds were not used for any other purpose.

Taxpayer represents that he wanted to move Amount 1 from IRA A to Investment Fund B in order to take advantage of the unique investment offerings from the fund. Before making the transfer of funds, Taxpayer inquired with Investment Fund B's representatives as to their ability to legally handle and house IRAs. Taxpayer was told by Financial Institution B's representatives on more than one occasion that Investment Fund B could indeed hold IRAs. Taxpayer then made arrangements to move Amount 1 to Investment Fund B and noted on the institution's questionnaire that he wished the funds to be maintained in an IRA. Despite the conversations with Investment Fund B's representatives, Account B was opened by Investment Fund B as a standard taxable brokerage account and Amount 1 was deposited into it on February 20,

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 1 contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

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Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover was due to an error on the part of Financial Institution B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA A. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an eligible retirement account. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter does not address ruling request number 2, as set forth in your letter ruling request of March 26, 2010, because ruling letter number two was withdrawn by your communication dated July 29, 2010.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***** (Identification Number ***** at (***) ***-****. Please address all correspondence to *****

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1